

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

V.

AND

Docket No. 1,071,205

ORDER

Claimant's brief to the Board indicated the parties agreed to submit this matter to the ALJ utilizing claimant's discovery deposition, Dr. Edward J. Prostic's report, Dr. Vito J. Carabetta's report and Dr. Carabetta's deposition. Neither respondent's brief, nor the aforementioned preliminary hearing Order, mentioned claimant's discovery deposition. Nor does the preliminary hearing transcript state the ALJ was to consider claimant's discovery deposition as part of the record.

Counsel for claimant and respondent agreed claimant's discovery deposition should be part of the record and an offer was made by claimant's counsel to send a copy of said transcript to the Division. ALJ Moore stated in an email dated November 9, 2016, to the undersigned that he did not recall whether he considered the discovery deposition. If he did, there would be a copy of the transcript in the court file. He did not have an electronic transcript, so if there was no paper copy in the court file, it was unlikely he reviewed claimant's discovery deposition. The Board received a copy of claimant's discovery

deposition transcript from claimant's attorney's office. After receiving the discovery deposition transcript, it is clear it was not part of the administrative file.

This Board Member finds that ALJ Moore, unknowingly, did not consider the entire record when issuing the preliminary hearing Order. The ALJ is the initial fact finder in workers compensation claims. The Board has held the trier of facts must consider the entire record to determine if a claimant has met his or her burden of proof.¹ Therefore, this matter is remanded to the ALJ² for consideration of the entire record.

WHEREFORE, the undersigned Board Member vacates ALJ Moore's September 15, 2016, preliminary hearing Order and remands this matter to ALJ Roth for consideration utilizing the entire record agreed upon by the parties, including claimant's discovery deposition and the preliminary hearing transcript.

IT IS SO ORDERED.

Dated this ____ day of November, 2016.

HONORABLE THOMAS D. ARNHOLD
BOARD MEMBER

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Honorable Steven M. Roth, Administrative Law Judge

¹ *Hulse v. National Beef Packing Company, L.P.*, No. 219,937, 1997 WL 377950 (Kan. WCAB June 20, 1997) and *Dixon v. Salina/Saline County Health Department*, No. 172,876, 1996 WL 548104 (Kan. WCAB Aug. 30, 1996).

² This claim has been transferred to ALJ Steven M. Roth.